Supreme Court, U. S.
FILED
AUG 20 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1243

ALVIN A. BECKWITH, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Washington, D.C. • THIEL PRESS • (202) 638-4521

PETITION FOR CERTIORARI FILED APRIL 2, 1975
CERTIORARI GRANTED JUNE 16, 1975

TABLE OF CONTENTS

	Page
Docket Entries	1
Grand Jury Charge	5
Excerpts from Transcript of Proceedings	7
Memorandum of Interview of 8/2/72	65
IRS News Release of 11/26/68	67
Press Release	69
Stipulation (Excerpted)	70
Judgment/Commitment Order	73

DOCKET ENTRIES

ROBINSON, J.

CRIMINAL DOCKET
United States District Court for the District of Columbia

UNITED STATES
vs.
ALVIN A. BECKWITH, JR.,
aka Alvin A. Beckwith

PDID 146068
DOB 8/13/29

U.S. Attorney
HARDY & LEVINE

JOHN G. GILL, JR. (Ret)
22 West Jefferson Street
Rockville, Maryland 20850

G.J. ORIGINAL
Criminal No. 480-73

CHARGE: 26 USC 7201
(Attempt to Evade and Defeat Tax)

DATE FILED: 6/12/73
BOND: PR w/conds – 1818 Que St., SE

DATE	PROCEEDINGS
1973	
June 6	Indictment Filed – Sealed by Direction of Court (2 counts)
June 6	PRESENTMENT made and indictment filed in Open Court; Oral motion of Govt to seal indictment; Indictment ordered sealed. BENCH WARRANT ordered and issued. HART, J Rep – E.A. Kaufman
June 8	INDICTMENT ordered UNSEALED. ROBINSON, J
June 12	ARRAIGNED: Copy of indictment given deft; PLEA OF NOT GUILTY entered deft

DATE	PROCEEDINGS
	granted 20 days to file motions; Calendar Call set 7-27-73; personal recognizance (Order signed). ROBINSON, J Rep – D. Spencer Herbert Hoffman, Atty ORDER for release on personal recognizance with conditions. ROBINSON, J Deft released from Courtroom.
June 29	MOTION for extension of time to file motions; P/A; c/s. MOTION for a Bill of Particulars; P/A; c/s.
July 9	MOTION for discovery and inspection; c/s; p/a. (FIAT) ROBINSON, J.
July 19	BENCH WARRANT ISSUED 6-6-73 returned executed. Deft. released on 6-6-73 on $5,000 bond.
July 27	MOTION to suppress statements and evidence; c/s; p/a. EXHIBITS A and B. (FIAT) ROBINSON, J. MOTION for subpoena and discovery and inspection (Set No. 2); c/s; p/a. (FIAT) ROBINSON, J.
July 27	CALENDAR CALL. Govt. granted 2 weeks to respond to defts. pending motion; personal recognizance. ROBINSON, J. Rep: D. Spencer – H. Hoffman
Sept. 19	OPPOSITION OF Government to motion to suppress statement and points and authorities in support thereof; exhibit A&B; c/s.
Oct. 4	MOTION of deft. for subpoena, heard and denied.

DATE	PROCEEDINGS
	MOTION of deft. to suppress, heard and denied. PROPOSED stipulation to be submitted by Govt. by 10-23-73. Deft. granted 2 weeks to respond. Pretrial set 11-7-73 at 4:00 p.m.; personal recognizance. ROBINSON, J. Rep: J. Blair H. Hoffman, Atty.
Oct. 31	GOVERNMENT'S proposed items of stipulation; C/S
Nov. 14	TRANSCRIPT OF PROCEEDINGS OF 10-4-73; Pages 1-149; Court copy; Rep - J.C. Blair
Nov. 16	Pre-trial; Further pre-trial set 12/14/73 at 10:00 A.M.; Personal Recognizance. ROBINSON, J. Rep – D. Spencer H. Hoffman, Atty
Dec. 14	Called for Further Pre-trial: Pre-trial continued indefinitely; Calendar Call to be set after 1st of 1974. ROBINSON, J Rep - D. Spencer Herbert Hoffman, Atty
1974	
Feb 8	CALENDAR CALL continued. (In Chambers) ROBINSON, J.
Mar 21	CALLED FOR TRIAL: Waiver of Trial by Jury filed; ORAL Motion of both counsel that Count 1 be severed from Count 2, heard & granted; Count 2 to be decided by Court on Stipulation of Facts; COURT FINDS Defendant GUILTY on COUNT 2 (Attempt to evade & defeat tax); Count 1 will be dismissed by Government at time of sentencing; Referred for expedited

DATE	PROCEEDINGS
	probation report; Personal Recognizance; Stipulation of Facts as to Count 2 filed. ROBINSON, J. Rep - D. Spencer Herbert Hoffman, Atty
May 2	SENTENCE: 5 years; $10,000.00 fine plus court costs; Personal Recognizance pending appeal. Judgment & Commitment Filed. ROBINSON, J. Rep: G. Fedoration & D. Spencer H. Hoffman, Atty.
May 2	NOTICE of appeal from sentence of 5-2-74; $5.00 paid and credited to U.S.
May 2	COPIES of docket entries to AUSA & USCA, Copies of Notice of Appeal to AUSA, USCA, Atty & Deft.
May 6	ORDER dated 5-2-74 releasing defendant on Personal Recognizance with conditions Pending Appeal. Defendant released from Courtroom. ROBINSON, J.
May 31	APPEARANCE of John G. Gill, Jr. entered as retained counsel.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

1975	
Jan. 22	Opinion & Judgment affirming conviction.
Mar. 3	Order denying Petition for Rehearing and Suggestion for Rehearing *en banc*.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on October 2, 1972

UNITED STATES OF AMERICA	:	Criminal No. 480-73
v.	:	Grand Jury Original
ALVIN A. BECKWITH, JR. also known as ALVIN A. BECKWITH	:	Violation: 26 U.S.C. 7201 (Attempt to Evade and Defeat Tax)

The Grand Jury charges:

FIRST COUNT:

That on or about the 15th day of April, 1972, in the District of Columbia, Alvin A. Beckwith, Jr., also known as Alvin A. Beckwith, a resident of the District of Columbia, who during the calendar year 1970 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1970, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the District of Columbia, a false and fraudulent income tax return on behalf of himself and his said wife, which was filed with the Director of the Mid-Atlantic Service Center of the Internal Revenue Service in Philadelphia, Pennsylvania, wherein it was stated that their taxable income for said calendar year was the sum of $6,829.55 and that the amount of tax due and owing thereon was the sum of $1,186.61; whereas, as he then and there well knew, their joint taxable income for the said calendar yearwas the sum

of $11,877.17, upon which said taxable income they owed to the United States of America an income tax of $2,288.80. (In violation of Section 7201, Internal Revenue Code; 28 U.S.C., Section 7201)

SECOND COUNT:

That on or about the 17th day of April, 1972, in the District of Columbia, Alvin A. Beckwith, Jr., also known as Alvin A. Beckwith, a resident of the District of Columbia, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1971 by preparing and causing to be prepared, by signing and causing to be signed, in the District of Columbia, a false and fraudulent income tax return which was filed with the Director of the Mid-Atlantic Service Center of the Internal Revenue Service in Philadelphia, Pennsylvania, wherein he stated that his taxable income for said calendar year was the sum of $10,821.78 and that the amount of tax due and owing thereon was the sum of $2,452.97; whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of $24,638.02, upon which said taxable income he owed to the United States of America an income tax of $8,348.51.

(In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201)

/s/ Harold H. Titus, Jr.

Attorney of the United States in and for the District of Columbia

A TRUE BILL:

Foreman.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[10] THE COURT: Mr. Hoffman contends that he has problems knowing from the record how this entire investigation arose and there has to be determined on the motion to suppress, whether or not at the time these agents talked with Mr. Beckwith at his home the circumstances were such that under the most liberal interpretation of or application of Miranda type warnings in a tax situation, there was in fact a situation which required those warnings.

Now, if the government concedes on the record that from the outset they were investigating this defendant for the possibility of bringing a criminal action against him, then it sets the stage for an inquiry as to exactly what went on when they interviewed him. So that, in essence, is Mr. Hoffman's position, but, unlike Mr. Hoffman, I do not think there is any necessity to inquire into all of the records with respect to this in order to make that determination.

I think that determination can be made by an inquiry of the agents.

MR. LEVINE: We would have no objection upon a proffer of relevance, Your Honor.

THE COURT: I think for the purpose of this motion [11] the government can see from the outset that, as Mr. Hoffman tells us about it, they were focusing on this defendant. There is no question about that.

MR. LEVINE: Focusing in the Jencks sense, Your Honor, not in the sense of Escobedo or Miranda. The focusing in Escobedo, of course, being one of custody.

THE COURT: You keep arguing custody. You know, you read the law more stringently than the cases that have come down.

MR. LEVINE: We are prepared to argue that, Your Honor.

THE COURT: There are extensive discussions about the breadth of Miranda or the application of the Miranda situation in tax cases.

MR. LEVINE: Yes, Your Honor.

THE COURT: And there is a considerable body of opinion, indeed, that holds that it is just not only the custody aspect of it when it is a situation where, as some courts have said, factually, although there may not have been technical custody for any period of time, to all intents and purposes the factual context in which the agents interrogated a taxpayer may be such that he had been overreached because he had not been adequately advised.

Now you will concede to that, will you not, Mr. Levine?

* * *

[19] GARY ROGER PETERSON

was called as a witness on the motion and having been first duly sworn was examined by counsel and testified as follows:

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q. Would you state your full name for the record, please? A. My name is Gary Roger Peterson.

Q. How are you presently employed? [20] A. I am employed by the Internal Revenue Service, Baltimore District, and I am stationed in Washington, D. C.

Q. What is your designation with the IRS? A. I am Special Agent with the Intelligence Division.

Q. How long have you been a Special Agent? A. I have been a Special Agent since July of 1968. A little over five years.

Q. Have you always been stationed in Washington? A. Yes sir, I have.

Q. Did there come a time, Agent Peterson, when you became familiar with someone by the name of Alvin Beckwith? A. Yes there did.

Q. Would you tell us the first date when you became familiar with that name? A. I can't give you the exact date but it is my recollection it would have been in March of 1972.

Q. And how did it come about that you came to know Mr. Beckwith? A. I was assigned by my supervisor to an investigation referring to Alvin Beckwith.

Q. Do you know how that investigation was initiated? A. Yes sir, I do.

Q. How was that? A. It was based on information from a confidential source.

Q. Given to whom? [21] A. Given to our office.

Q. What information was that? A. The information to the best of my recollection was that Mr. Beckwith had failed to return all of his income on his federal income tax return.

Q. You are saying that a call came in to the IRS and that initiated an investigation by you, without more? A. I don't know whether it was a telephone call or just, you know, whether it was in person at this point in time.

Q. You were assigned to a case just on a tip, is that your testimony? A. Yes, sir, I would say that is right.

Q. And were you working with a revenue agent at that time? A. No sir, I was not.

Q. In March? A. No.

Q. Well how come this case took on criminal aspects based just on a tip from an informant? A. We have various ways of cases being, you know, coming into our jurisdiction. One of those ways is information from a confidential source making allegations against an individual.

Q. Well there is a difference, is there not, Agent Peterson, between a Special Agent, which you are, and a [22] Revenue Agent? A. Yes there is.

Q. Am I correct in that the Revenue Agent is basically to ascertain civil liability to the Internal Revenue Service or the government? A. That is correct, yes.

Q. And your function is criminal in nature? A. My function is to investigate the possibility of criminal violations of the Internal Revenue laws.

Q. And tell me more about this tip. What did this informant say? A. To the best of my recollection that was the sole extent of it.

Q. That he was not reporting certain income? A. That's right.

Q. And what makes that a criminal violation? A. Well it is a possible criminal violation if a person that is not reporting income on their tax returns, if it was taxable income.

Q. Well there is a difference, is there not, between civil and criminal tax liability. There is an element involved there– A. Well there is a difference between civil and criminal, yes.

Q. What I am trying to get at if you understand [23] my question, is this: what was it from the tip, if you know, that led your office at the outset to begin a criminal investigation rather than a civil determination as to the facts? A. Well, as far as the cases originating, there are different sources, as I said, but in general the division initiates an investigation without anyone from the audit division which is comprised of the revenue agents. Revenue agents may not get involved in the case for several months after it gets initiated until such time as we would request one.

Q. And when did a Revenue Agent first become involved in this case? A. I don't recall exactly but I would

say that it would have been some time after March 29 of 1972.

Q. Well could you give us the date? A. I don't have that information with me today.

MR. HOFFMAN: Your Honor, I will ask the government to produce that information.

THE COURT: What difference does it make?

MR. HOFFMAN: It makes a substantial amount of difference insuring that there has never been any civil intention at all in this case.

THE COURT: Well I believe the government will concede that. The agent said that they got a tip and they started right out with him.

[24] MR. HOFFMAN: Alright.

BY MR. HOFFMAN:

Q. Now, without going into the details, how long did you investigate Mr. Beckwith? A. Well, as I said, to the best of my recollection, the investigation was initiated, in other words, assigned to me, on or about March 29, 1972. Due to other cases that I was working on at that time I don't believe we–I began making any contacts, going to the various public records and those type of contacts, until possibly May, sometime in May, 1972.

Q. Now you said "we" before–were there any other agents being assigned with you on the case or were you the sole agent, was this your sole project, in other words? A. In may of 1972 I believe that there was–I am almost sure that there was a Revenue Agent assigned to work with me at that time. I was still the man in charge of it, to put it that way.

Q. Were there any other Special Agents working with you? A. No, I was the agent assigned, but there may have been an agent involved at one point in time but to my recollection there was not–I mean, as a witness.

Q. Well let me ask you this: between March and August did you have any conferences with Assistants of the United States Attorneys office concerning Mr. Beckwith? [25] A. To the best of my recollection, no.

Q. You had no conferences at all? A. To the best of my recollection, no.

Q. And is it your testimony that you were not dealing with any prosecutor or prosecuting attorney? A. No, that's right. I would say we did not get involved with any Assistant United States Attorneys until after the interview, the initial interview, but at some point in time later there were some instances of contact.

Q. Was that before the indictment? A. Oh yes, it was before the indictment.

Q. Is it fair to state, then, that you had done a considerable amount of investigation about Mr. Beckwith before you went to see him on August 1? A. Yes, we had, as I say, had quite a bit of information relative to his background and his family and that type of thing.

Q. And specific transactions of his? A. We had some, yes.

Q. And how was it that you went to his house. Did you call him for an appointment or— A. No, I did not.

Q. You just appeared, didn't you? A. Yes.

Q. With another agent? [26] A. Yes.

Q. At what time did you appear? A. I believe it was 8:00 o'clock.

Q. Why was it that you didn't call Mr. Beckwith first to arrange an appointment? A. Well sometimes we do it that way. There is no particular reason.

Q. Isn't it fair to say that you wanted to make sure that he would not consult an attorney before you went to see him—wouldn't that be one of the considerations that you had? A. No.

Q. And when you got to his house at 8:00 o'clock, was that in the morning? A. Yes sir.

Q. Is it your normal procedure. What time do you start work? A. I start work at approximately 7:30 in the morning.

Q. And you went out to his house at 8:00? A. I believe so, yes.

Q. How did you know he would be home? A. How did I know? I wasn't sure that he would be there.

Q. But you went? [27] A. But from prior investigation and information I had developed that Mr. Beckwith was the manager of a liquor store and my information indicated that the liquor store did not open until 10:00 o'clock, so I figured that this would be a good time to interview him, and I didn't want to go to the liquor store, not to have any possible embarrassment—we don't like to interview people in front of other people.

Q. So you went to his house at 8:00 in the morning? A. Yes sir.

Q. And you didn't call first? A. That's correct.

Q. Who answered the door? A. I can't recall specifically who had answered the door. It might have been a teenager in the house or it might have been a person known to me as Evelyn Wills. I just don't recall.

Q. You are not certain? A. I am not certain.

Q. Did you make any notes of this? A. No I didn't.

Q. Alright, what happened when you knocked on the door? A. I identified myself. I said I was Mr. Peterson of the Internal Revenue Service and I would like to talk to Mr. Beckwith.

[28] Q. You went with someone else, didn't you? A. Yes.

Q. Why did you go with another person? A. Well it is a policy of the Internal Revenue Service Intelligence

Division that when an agent is interviewing a taxpayer that a witness be present, another Special Agent.

Q. And when was it that you decided that you would interview Mr. Beckwith on August 2? A. When—at what point of time, do you mean?

Q. Yes, when did you decide that? A. To the best of my recollection it would have been probably within a few days prior to that time. To my recollection I was working on another case during the month of July and I just finished that case and had made the decision then.

Q. And you decided, I mean it wasn't a spur of the moment thing, that is what I am trying to get at? A. No, this is normal procedure when we are interviewing a taxpayer in any investigation and, as I said, I did come to the decision at that time to interview Mr. Beckwith.

Q. That would be on August 2, and you said that you made that decision a few days before hand? A. Well, I knew that I was going to interview him from the very beginning because, as I said, I had been working on other cases and I did make some contacts on the case, but I didn't make the decision to interview him until, as I said, [29] until August because I was working the whole month of July on another case and in fact most of June and July to my recollection.

Q. Now what happened when you identified yourself to the person who answered the door? A. Well that person, whoever that person was, we told them that we would like to talk to Mr. Beckwith about his taxes and they asked us to step in and I believe they showed us into the living room and they asked us to have a seat.

Q. Then what happened? A. I think very shortly after that Mr. Beckwith, to the best of my recollection, Mr. Beckwith came down the stairs, he had his pants on but I think he had a T-shirt on and I identified myself to him and said we would like to talk to him and he said—

Q. What do you mean when you say you identified yourself. Did you say "I am Gary Peterson?" A. With the Internal Revenue Service.

Q. With the Internal Revenue Service? A. Yes.

Q. And what did Mr. Beckwith say? A. He didn't say anything. He said "I would like to get finished dressing if you don't mind" and I said "fine" and he went on back upstairs.

Q. How long was he upstairs, a couple of minutes? [30] A. Oh, about five minutes or a little longer.

Q. And then he came back downstairs? A. And then he came back downstairs.

Q. And did you start a conversation with him? A. We went into the dining room and sat down at the table, Mr. Beckwith, myself and Mr. Fornili was there.

Q. Alright, what happened in the dining room? A. I am sorry?

Q. You told him that you were from the IRS and you went into the dining room? A. Okay. At that time I presented my credentials to him for his inspection. I said I was a Special Agent with the Intelligence Division of the Internal Revenue Service and I said that I had been assigned to investigate, to an investigation regarding his federal income tax liability for the years 1966 through 1971.

At that time, as we were required by the Internal Revenue regulations, I proceeded to—and this is prior to asking him any questions whatsoever—I advised him I was a Special Agent and that one of my functions as a Special Agent was to investigate the possibility of criminal tax fraud.

Q. You first told him you were investigating his federal tax liability? A. Well, I don't recall that—

Q. And then you said you were an Intelligence Agent [31] and then you went ahead and identified yourself

again as a Special Agent and that you were going to investigate his criminal tax liability, is that true? A. Well, I'd have to refer to the records to get the exact—

Q. Well did you take any notes of what you said? A. These notes were reduced.

Q. When, when you got back to the office you just copied down from recollection what you said, didn't you—what you told him—is that what you copied down? A. No, I am required to tell him, I carried with me a preprinted card of what I am required to tell him.

Q. Oh, do you have one of those cards with you? A. Yes.

Q. May I see one of them?

MR. HOFFMAN: Your Honor, may we have this marked as a defense exhibit for identification?

(Whereupon Defendant's Exhibit No. 1 was marked for identification)

MR. HOFFMAN: Do you want to see that?

MR. LEVINE: I am familiar with it.

BY MR. HOFFMAN:

Q. When you say he came in with you, Agent Peterson, and you are sitting down in the dining room you said you took out your credentials and showed him your credentials? [32] A. Yes.

Q. And then you read off of this card, did you, or did you pick it right off the top of your head, telling him what his rights were and who you were and so on. A. No, I read him the card regarding the functions of the Special Agent and I read from the card the advice of rights except for the first couple of words there.

Q. You read from the card the first time that you talked to him, is that right? A. Yes, it is my policy and it is IRS policy, before we go into any discussions whatsoever, to advise the person of the functions and to advise him of his rights as per our IR manual.

Q. Are you familiar with the memorandum of the interview that you wrote? A. Yes sir.

Q. How did you happen to leave that out—you said that you were talking to Mr. Beckwith and then later on there are indications that you read from the card with the advise of his rights but you didn't mention that in your memorandum. A. May I refer to my memorandum now?

Q. Do you have a copy? A. I have a copy here with me.

MR. LEVINE: I am not sure I understand the question.

MR. HOFFMAN: Well let me try to rephrase it.

[33] MR. LEVINE: If you would.

BY MR. HOFFMAN:

Q. At page no. 1 of your memorandum, you indicate the words "I told Beckwith" so and so and so and so and you make no indication that you had read from any card and then you go to page 3 and you specifically say "I had Beckwith read from the card which contained a statement of rights". A. Yes, that's correct.

Q. Well are you saying that the memorandum is wrong, then, that you didn't tell him or explain to him your function, or that you read from the card for him initially or what, which is correct? A. I advised him that, prior to asking him any questions, I advised him from the card. I picked up the card, the part that starts "under", that is where—

Q. Well was the memorandum of your interview correct then—you didn't mention anything about reading from the card?

MR. LEVINE: Objection, Your Honor. I think the Court should see a copy of the memorandum.

THE COURT: I have seen the memorandum. He has testified that he told him who he was and he just testified

he read him his rights and then later on he had him read his own rights and that's what the memorandum says.

BY MR. HOFFMAN:

Q. What happened after you say you read him what [34] is on that card, Defendant's Exhibit No. 1? A. We asked Mr. Beckwith, or I did, if he understood his constitutional rights and he acknowledged that he did.

Q. How did he acknowledge that he did? A. He said that he was aware of them and he knew that he didn't have to talk to us.

Q. And you didn't tell him that he didn't have to talk to you, did you? A. I did tell him exactly what I am required to say.

Q. You told him "I cannot compel you to answer questions"? A. Right, that's right.

Q. "That might incriminate you"—that is what you told him? Did you ever tell him that he had a right to remain silent and not to answer any questions? A. To my recollection, no, I did not.

Q. Did you tell him anything about the tax investigation? A. I told him that from the very beginning, after advising him of my functions, I told him that I was conducting an investigation regarding his federal income tax liability.

Q. Did you tell him anything about net worth, or about proving understatement of income, or cash expenditure theories or anything like that? [35] A. Not that I—

Q. Or was there any indication by you as to any of those matters or any indication by Mr. Beckwith to you that he had any knowledge of any of those matters of proving understatements of income or theories of that kind? A. Not to my recollection.

Q. In fact, Mr. Beckwith told you, did he not, Agent Peterson, somewhere along the line, about his education? A. Yes he did.

Q. Was that after you had already taken information from him or begun to interrogate him? A. That was after I advised him of his constitutional rights, as I was required to do.

Q. How long after it? A. Well I believe it is on page 3.

Q. How long did you interrogate him before you found out whether or not he could read or write? A. As I said, I don't know the time sequence of it, but the information as recorded in my memorandum prior to the section as to reading and writing is what was obtained at that particular time, primary information as to family, address, where he lived, this general type of questions that we ask.

Q. You could see the money he was paying for different things and you also asked him about that, didn't you? A. I may have on one or two occasions, I don't recall.

[36] Q. Well this is the first time and you wanted to find out whether or not he could even read and write, isn't that right? A. At that point in time that question came up.

Q. But it didn't immediately follow before you started to talk with him, that didn't follow? A. No.

Q. You initially advised him of his rights, and it didn't follow immediately after that? A. No, that's correct.

Q. So I take it you must have talked to him at least fifteen or twenty minutes—

MR. LEVINE: Objection, Your Honor. I wonder if Mr. Hoffman would just ask the questions rather than having Mr. Hoffman give the testimony.

THE COURT: Well I guess we could give him some leeway.

MR. LEVINE: No objection to substantial leeway, Your Honor, but he is giving the testimony.

THE COURT: Well, I know the Agent is testifying but the Agent has been asked to approximate as best he can how long he had talked with Mr. Beckwith and basically what information he had obtained from him before he knew about his intelligence level or, rather, before he knew whether or not Mr. Beckwith could read or write and I think that the Agent [37] ought to be able to give some estimate if he can.

MR. LEVINE: No objection to that question as you frame it, Your Honor.

THE COURT: Well that is what Mr. Hoffman was trying to find out from the Agent. The Agent has indicated that he could not give any specific time but the best he can do is relate to it what information is in his report which he got before he reached that stage in the report, isn't that right?

THE WITNESS: That's right, Your Honor.

THE COURT: Mr. Hoffman is asking him if he asked him about net worth and whatnot and what he bought and what he had and so on before he found out whether or not he could read or write.

THE WITNESS: Well to the best of my recollection in my experience I would say that it was approximately 15 to 20 or 30 minutes and maybe not that long.

BY MR. HOFFMAN:

Q. That is when you say you read the card to him again? A. No I didn't say that.

Q. Why did you read the card to him again? A. I did not read the card to him at that point in time.

Q. You say you did not read the card to him when he told you about his education? [38] A. No, I am sorry. I asked him to read the card to me to determine if he could read or write.

Q. Did he sign the card? A. No he did not.

Q. Did you ask him to sign the card? A. No I did not.

Q. Did you ask him to in any way indicate to you that he understood? A. Well at that point, I did not ask him if he understood what he was reading. I just asked him to read. I was trying to determine that he could read.

Q. Did you ask him to sign any waivers? A. I didn't ask him to sign any waivers.

Q. So that as far as your opinion is concerned, that was based on what he told you, he acknowledged he understood and that he read from the card? A. That's right.

Q. I see—I only have the first page of this report and I wonder if we could have the rest of it—

MR. LEVINE: Your Honor, I only have the original here.

THE COURT: You don't have a copy?

MR. LEVINE: Well let me give you my third page. I might advise Your Honor that I will be glad to get another copy for Your Honor if Agent Peterson has one.

[39] THE COURT: Would you.

(Whereupon Mr. Levine was temporarily excused from the courtroom)

THE COURT: We will take a short recess and you can get it through the recess, Mr. Hoffman.

(Whereupon a short recess was taken)

MR. LEVINE: Before we proceed I might advise Your Honor that I have given the whole copy to Mr. Hoffman as pretrial discovery and it has been turned over in its entirety to the defense.

THE COURT: Alright, why don't you mark this copy that I have and I will use it. Alright, you may proceed.

BY MR. HOFFMAN:

Q. Now Agent Peterson, what happened after Mr. Beckwith, as you testified, read the card that is marked as Defendant's Exhibit No. 1 for identification? A. We continued questioning.

Q. Well before that wasn't there some discussion about how much he knew about accounting and tax returns and that sort of thing? A. Yes.

Q. Well I want to know how all of this came about at that point? A. That is one of the questions we normally ask, that's correct. To my recollection we certainly asked that [40] when we had him read the statement.

Q. And he said that he had had no instruction in any of those areas, right? A. That's correct.

Q. Did you ascertain any other facts from him referring to his intelligence or knowledge of reading or writing or the matters that you were asking about with him? A. Not to my knowledge other than just what we said about how far he went in school.

Q. But you came away with the fact that he had gone through the tenth grade and that he could read from the card and he acknowledged to you that he understood it? A. He read the card. I did not say that he said he understood it. I don't recall that.

Q. You don't recall whether he said he understood? A. At the second time I just asked him to read the card to determine if he could read.

Q. And then you started to interrogate him some more, is that correct? A. I asked him some more questions.

Q. Right, well—did all of this take place in the dining room as well? A. Yes.

Q. Was there any break at all? A. Not to my knowledge, no.

[41]Q. You talked from approximately 8:00 until 11:00? A. That's correct.

Q. And referring, Agent Peterson, now to page 3 of your memorandum, you asked him about some expenses and automobile repair bills, is that correct? A. Yes sir.

Q. And he answered that he didn't know why his accountant didn't claim those as deductions on his return? A. I believe he did, yes he did—that's right.

Q. How did this come about, did he communicate to you that he knew that these were deductions or did you explain to him that those were deductions and those could be taken as deductions? A. I don't recall whether I explained it to him, you know, whether he could take them off.

Q. What I am trying to get at is how was he coming over to you, as to whether he knew about these tax matters or not, as to whether he had any knowledge, because you have an item in here, for example, gas and oil depreciation. Did he use the term "depreciation" or did you use the term "depreciation"? A. No, those are ours.

Q. And he was uncertain about that? Are you saying that you don't know how this came about, whether he could claim a deduction for his gasoline expenses, or oil? [42] A. No, I am not certain how it came about. I asked him if he used his car in connection with the business and he responded that he did.

Q. That he did? A. Yes.

Q. Well, how did the talk about deductions go as far as the tax returns—how did that come about? A. I probably said something that there is no indication, you know, that you are claiming them on the returns.

Q. Well you had examined the returns, had you not? A. Oh yes.

Q. And you didn't see any—

THE COURT: Now the Agent has told you it came about because he said that he used his car for his work.

THE WITNESS: Yes, well that—

THE COURT: That is what Mr. Hoffman wants to know. Is that true, is that how it came about? You are

talking about gas depreciation deduction on the car and that was because he said he used his car to make deliveries—did he tell you that?

THE WITNESS: Yes sir.

BY MR. HOFFMAN:

Q. And then you went on and started the next phase of your questioning directed at individual tax returns, as I take it from your memorandum, is that right? A. The next phase after talking about the car expenses?

[43] Q. Yes, then you started to get into individual tax returns for each year from '66 to '71? A. That's correct.

Q. Five different returns? A. Yes sir.

Q. With respect to his 1966 return he told you that he had won some money and you said "gambling", is that right? A. Yes, I believe so.

Q. And then there was a discussion according to your memorandum about whether or not gambling income was taxable or nontaxable? A. That's correct.

Q. How did this come about? A. Well, when he indicated that he had won some money gambling, I asked the next question would be "do you know that gambling income is taxable?"

Q. And what did he say? A. And to my recollection, I have to refer to the notes, that he indicated that he didn't know that he had to report it?

Q. Did or did not know? A. Did not.

Q. Did not, did you tell him that his loss or his winnings were only deductible, that his losses were only deductible, to the extent of his winnings? [44] A. I don't recall at this time.

Q. You didn't go into that? A. I didn't get into a general discussion about what was required, certainly.

Q. Then you went into—again in 1967 about some more gambling, and then in 1968 and '70, is that correct? A. That's correct, yes sir.

Q. How, after you went through each of these returns with him, what happened next? A. After I went through the returns I continued asking him some more questions but I would have to refer to—

Q. You want to refer to your notes? A. Yes, after I went into the returns then normally I go into asking questions about his bank account.

Q. And you say you do that normally, but how did you know that you did that? A. Oh, in this case?

Q. Yes, in this case. A. Well in this case I went into questions about what type of bank accounts he had.

Q. Did you ask him to produce any of the records of his bank accounts? A. I believe I did, yes sir.

Q. When was this? [45] A. I might not have asked him at that particular time but prior to the interview being concluded I believe I asked him if he would furnish us with his records.

Q. Did you ever tell him that he had the right not to produce any of his records to you? A. That's right, yes sir.

Q. When was that? A. This occurred at the liquor store after we left his house. He said, I think to my recollection, he said his records of some of his bank accounts were at the liquor store. We adjourned the meeting at his house and drove down to the liquor store where we met him a little while later and he came up with the books but before he gave me the books I advised him that he did not have to furnish those records to me.

Q. How did you advise him? A. Probably—I did not to my recollection, I did not read the full statement again, but I said something like "you are not required to furnish these records to us".

Q. That is the best of your recollection? A. Yes sir.

Q. Did you make any notes when you were there other than you report and memorandum here? A. I did have notes.

Q. Did you destroy those and are they available? A. To my recollection I believe they were destroyed.

[46] Q. They were destroyed? A. Yes sir.

Q. And they were reduced to this memorandum? A. Yes.

Q. They were reduced to this and then you destroyed them? A. Right.

Q. Now you talked with him about, what, three hours at his house? A. Yes sir.

Q. Did the other agent ask him any questions at the same time or did he just sit there taking notes of what you were doing and saying and what Mr. Beckwith was saying? A. Mr. Fornili asked questions from time to time, I believe, but I was doing most of the questioning.

Q. Was he taking notes? A. To my recollection I don't believe he was.

Q. How were you seated in the diningroom? A. If I can remember it was, I guess it was sort of rectangular, the table, and we were all, I was probably, I was at the end of the table and Mr. Fornili was to my right and then Mr. Beckwith was to his right.

Q. You say he may have asked a few questions but he didn't participate too much? A. No.

[47] Q. Was he making notes? A. Not to my recollection.

Q. He just sat there listening? A. Right, listening.

Q. And you were taking notes? A. Yes I was.

Q. And then you took him with you, did you—or before we get to that, did you talk with him about his car and his insurance, etcetera, on some of his personal property? A. That's correct.

Q. And then you adjourned to the liquor store? A. That's right.

Q. And at that time did you leave his house? A. It was about 11:00 o'clock.

Q. And it took you 45 minutes to get to the liquor store on Colorado Ave.? A. Approximately, we may have stopped to get a cup of coffee on the way down, I don't recall.

Q. Did you take him with you? A. No sir, we did not.

Q. Did you tell him to meet you down there? A. We asked him if he would.

Q. Go with you? A. No, we asked him if he would meet us.

Q. And then what happened—were you there before [48] or did he get there before you did? A. To my recollection we may have gotten there before him, I just don't recall. We may have gotten there and then he walked in shortly thereafter.

Q. You were waiting at the liquor store? A. We may have been, yes—we probably were inside, yes.

Q. You said before that you didn't want to interview him at the liquor store because it might embarrass him to have other people there, right? A. Right.

Q. But that did not affect you as far as going down there and getting the records? A. Well, no, right.

Q. How long did you stay at the liquor store? A. I don't recall offhand. I would have to refer to my notes. I guess we were there about 10 or 15 minutes at the most.

Q. And you say that you gave him a receipt and you left with the records and checks etcetera? A. Yes, right. I gave him a document receipt.

Q. And you told him how many times—you told him initially that this was a possible criminal violation, right? A. I told him that it—I told him that one of my functions was to investigate the possibility of criminal tax [49] fraud.

Q. One of your functions? A. Right.

Q. Did you tell him what your other functions were? A. No I didn't.

Q. And then did you tell him what your function was with respect to investigating criminal tax fraud? A. I told him I was investigating his income tax liability.

Q. His liability—but did you say his criminal liability or just liability? A. I said federal income tax liability.

Q. And that is the only thing—is it not true, Agent Peterson, that only one time did you mention a criminal violation and that is when you told him initially that one of your functions was to investigate the possibility of criminal violations? A. To my recollection you are correct, sir.

Q. And that was the only time—and the rest of the time that you were with him, the only words used are those on the card? A. That's correct.

Q. And you took the records from him at the liquor store but you didn't tell him that those records could be used in a criminal proceeding, did you?

* * *

[56]MR. HOFFMAN: May I have the Court's indulgence for one second, Your Honor.

(Whereupon there followed a discussion between counsel off the record)

MR. HOFFMAN: That's all I have, Your Honor.

CROSS EXAMINATION

BY MR. LEVINE:

Q. With the Court's pleasure, may I inquire briefly Your Honor—

THE COURT: Yes, you know you have the right to. You don't have to ask permission.

MR. LEVINE: Thank you, Your Honor.

BY MR. LEVINE:

Q. Mr. Peterson, can you tell us how the Washington Branch Office is organized?

MR. HOFFMAN: Your Honor, that is irrelevant.

THE COURT: I think it is irrelevant, too.

MR. LEVINE: Well, I wanted to inquire briefly, Your Honor, what I am trying to do is perhaps rebutt the inference of Mr. Hoffman that this is an unusual type of inquiry.

THE COURT: I will take judicial notice of the organization of the Washington Branch Office of the Internal Revenue Service on the date in question.

MR. LEVINE: Alright.

THE COURT: Is there any contest between the two of you [57] as to how it was organized?

MR. HOFFMAN: None by me.

THE COURT: I didn't think so.

MR. LEVINE: Very well, Your Honor.

BY MR. LEVINE:

Q. Agent Peterson, of the cases you get, being assigned to the Washington Branch Office in the Special enforcement Division, how many in percentage terms come from Revenue Agents?

MR. HOFFMAN: Your Honor, I think this is irrelevant, too.

THE COURT: No, you may answer that question.

THE WITNESS: The percentage would be, from Revenue Agents, did you say?

MR. LEVINE: Yes.

THE WITNESS: Let's see—over the last two years to my recollection the percentage was, would be one percent, two percent, if that many.

BY MR. LEVINE:

Q. Do most of the investigations in which you become involved commence with the Special Agent? A. Do you mean since I have been with the Internal Revenue Service?

Q. Since you have been in the Washington Branch of the Special Enforcement Division. [58] A. Since I have been involved with the Special Enforcement Division—what was it you asked in your question again?

Q. Do most of your cases commence or most of the cases which you investigate commence with the Special Agent? A. That's correct, that's right.

Q. And, Agent Peterson, directing your attention to August 2, 1972, the date of the interview with Mr. Beckwith, what was the purpose for having Agent Fornili with you? A. Well, the purpose was to have him as a witness to corroborate what the taxpayer said and also to corroborate anything that might occur at a later time as to allegations of misconduct of either the IRS or myself brought by the individual.

Q. Agent Peterson, speaking of that interview of August 1, 1972, when you first contacted Mr. Beckwith, that morning, did you tell him that you were investigating him for criminal tax liability? A. When I first saw him?

Q. Yes. A. I probably—I don't recall saying criminal tax liability when he first walked in the room, you know, prior to him coming back downstairs and us sitting down at the table.

Q. Well, let's put it in sequence. Suppose you tell me upon your first contact with him when you first [59] encountered him in his home— A. To the best of my recollection I told him that I was a Special Agent, Special Agent Peterson with the Internal Revenue Service Intelligence Division and that I wanted to ask him some questions regarding his income tax.

Q. What, if anything, did he say then? A. He said that he would like to go upstairs and put his clothes on and he would come back down and talk to us.

Q. And I trust that occurred? A. That's right.

Q. And when he appeared dressed in the living room of that home what, if anything, did you first tell him? A. At that time I believe we went into the dining room to sit down and, as I say, no questions being asked by me prior

to us sitting down, and then as soon as we sat down I presented my credentials that contained my commission and our badge which is attached to it, and I identified myself as Gary Peterson and Mr. Fornili identified himself, showed his credentials, and I read the statement regarding my functions as a Special Agent and then I proceeded to tell him of the years I was investigating and then I addressed, I told him I wanted to ask him some questions but before I did that I was required to read to him his rights.

Q. Alright, now, Agent Peterson, directing your attention to Defendant's Exhibit No. 2, I believe it is, [60] directing your attention to the rights that you actually read to him, anywhere in that recitation of his rights, does it include the terms "criminal proceeding", "information that might be used against you in criminal proceedings"?

MR. HOFFMAN: Your Honor, I don't see any reason for Mr. Levine leading the witness. It speaks for itself.

THE COURT: I think so. I can read.

MR. LEVINE: Very well. May we have it entered into evidence, then—Defendant's Exhibit No. 2?

THE COURT: It will be received.

(Whereupon Defendant's Exhibit No. 2 was received into evidence)

MR. LEVINE: May we also move into evidence, Your Honor, defendant's Exhibit No. 1 which is the card which also used the same term "criminal proceedings"?

THE COURT: Any objection?

MR. HOFFMAN: No Objection.

THE COURT: It will be received.

(Whereupon Defendant's Exhibit No. 1 was received into evidence)

BY MR. LEVINE:

Q. Mr. Peterson, when you spoke with Mr. Beckwith, was he coherent? A. Yes sir. He appeared to be.

Q. Did he appear to be under the influence of drugs [61] or alcohol? A. Didn't appear to be.

Q. Was he responsive to your questions? A. Yes sir.

Q. Was he well oriented as to time and place? A. Yes, he was in my opinion—it was a friendly type of conversation. I don't recall him becoming beligerent at any time or yelling or anything like that, or asking us to leave or anything.

Q. Was there anything about the inquiry or the initial portions of the interview wherein you advised him of his rights pursuant to the agent's manual and the card, that he indicated that there was something about it he didn't understand? A. No, no he did not.

Q. Did you ask him if he fully understood all of what you said? A. Yes I did.

Q. And what was his response to that? A. He stated that he understood what we read.

Q. During the course of the interview did you ever ask him if he had an attorney or an accountant? A. Yes sir, I did.

Q. What did he respond? A. He said that Mr. Hyman Taiche was his accountant and also handled some of his legal matters for him.

[62] Q. Well did he indicate that Hyman Taiche was an attorney, did he indicate that he believed him to be an attorney? A. I believe he indicated that Mr. Taiche was an attorney.

Q. Did he ever ask that Mr. Taiche be present during the course of the investigation? A. No, he did not.

Q. Alright, and referring to the moment in time soon after you commenced the interview wherein the defendant read from your card now in evidence as Defendant's

Exhibit No. 1, could you tell us how he read that card? A. He read it without any hesitation.

Q. Did he read it outloud, do you mean? A. Yes, he read it outloud. I asked him to read it outloud.

Q. And did he read it smoothly and without hesitation? A. Right.

Q. And after reading the card smoothly outloud, did he ask you any questions about it? A. No he did not.

Q. Did he ask you or give you any reason to believe that he didn't understand any part of that card? A. No, no.

[63] Q. Was there ever a time during the course of the interview, during the entire operation of it, that Mr. Beckwith asked to see an attorney? A. No.

Q. Was there ever a time during the course of the interview where he said he wanted to stop answering questions, that he didn't feel like answering any more or talking to you anymore? A. No.

Q. Did there ever come a time during the course of the interview that he said "I wish to exercise my right to remain silent"? A. No.

Q. After Mr. Beckwith had started talking with you, if he had asked you to leave with Mr. Fornili, would you, what would you have done? A. We would have left.

Q. Was there ever a time during the course of the interview that you put Mr. Beckwith into custody? A. No sir.

Q. Was there ever a time during the course of the interview that you led him to believe that he was not free to leave whenever he wanted to? A. No sir.

Q. Was there ever a time during the course of the [64] interview that he indicated to you that he was tired or fatigued in some way and wanted to rest and stop talking? A. No sir.

Q. Was there ever a time during the course of the interview that he indicated he was not in full accord with what you were doing, and that he did not want to respond or that he had some feeling about it? A. No sir.

MR. LEVINE: Your Honor, I have no further inquiry.

THE COURT: Alright, you may inquire.

REDIRECT EXAMINATION

BY MR. HOFFMAN:

Q. Now you said that this was a friendly type of conversation? A. Yes—well what I meant is we were not yelling at each other.

Q. And you say you came into the man's house and you told him you were going to investigate him for criminal tax violations? A. I said possible criminal tax violations.

Q. Possible criminal tax violations? A. Yes.

Q. And then you all sat down at the table and just sort of chatted together in a friendly like way? A. Well—

* * *

[66] A. I asked him if he was the owner.

Q. You just asked him "are you the owner?" just like that? A. "Are you the owner?"—right.

Q. And Mr. Levine just a second ago asked you about whether or not Mr. Beckwith at any time asked if Mr. Taiche who was identified as a sometimes attorney for the defendant, could be present and you said that he never asked for the attorney to be present, is that correct? A. Would you repeat that question?

Q. Special Agent Peterson, Mr. Levine asked you if Mr. Beckwith at any time had requested that his attorney be present during the course of the interview or inquiry and you said no? A. That's correct.

Q. Could you tell us when you ever told him that he had a right to have his attorney? A. Yes, I told him at the very beginning.

Q. At the point—tell me where? A. When I read him his rights.

Q. Show me where there is the reference in his rights—show me where it indicates that he is entitled to have his lawyer present?

THE COURT: "I advise you further that you may if you wish have the assistance of an attorney before responding"— [67] any other reference?

BY MR. HOFFMAN:

Q. Any other reference? A. None other than the fact that when he read the card he read the same statement.

Q. Did you ever tell him that he had the right to have an attorney in the room that morning during questioning? A. Those exact words?

Q. Yes. A. No sir.

Q. Mr. Levine also asked you if at any time during the inquiry did Mr. Beckwith say that he wanted to exercise his right to remain silent as he had it, and you said no? A. That's correct.

Q. Did you tell him at any time that he had the right to remain silent? A. To my recollection I didn't tell him those exact words.

Q. You never told him other than, the only thing that you told him was that you couldn't compel him to answer questions that might incriminate him? A. That's correct.

Q. And did you explain to him what type of answers would incriminate him? A. No I did not.

[68] Q. Didn't it become apparent during the interview, Agent Peterson, that he knew very little about tax law or tax deductions? A. Yes.

MR. HOFFMAN: That's right—that's all I have.

RECROSS EXAMINATION

BY MR. LEVINE:

Q. I just have one or two questions, Agent Peterson, at the time you interviewed Mr. Beckwith at his home, did you ever at that moment in time have any evidence which would indicate to you that Mr. Beckwith had in fact been involved in the commission of a crime?

MR. HOFFMAN: Oh, Your Honor, I object. We had stipulated—

THE COURT: No, it is within the focus of the investigation. You may answer that.

THE WITNESS: Would you repeat it please, sir.

BY MR. LEVINE:

Q. At any time on August 2, 1972 when you interviewed Mr. Beckwith at his home did you in fact have any information sufficient, perhaps for probable cause to believe that Mr. Beckwith in fact had committed an income tax crime?

MR. HOFFMAN: Oh, no, I object. That calls for a conclusion of the witness that only the court can determine and we have never gone into the investigation that he performed [69] from that point of view—that is what I requested and now Mr. Levine wants to extract from the witness just the opposite of what I was not permitted to bring out.

THE COURT: What's the relevance of the question. I don't see the relevance.

MR. LEVINE: Well, the reason I asked the question, Your Honor, if I may make a statement to the Court, is on the issue as to whether or not Mr. Beckwith was in custody. If he was in custody or detained, all the indicia that Miranda speaks of, wherein he is entitled to his warnings, become relevant—how far had we gone, as Mr. Hoffman says, was he free to leave, was he free to tell these people "gentlemen, I think you should leave". I

want to know if the Agent said, as he might have said, "No, Mr. Beckwith, you are not permitted to leave and nobody is going to leave including you—you are under arrest." Now, if so, he can say that, but if he thought—

THE COURT: He didn't say that. I don't know what he thought but he didn't say that.

MR. LEVINE: That's right.

THE COURT: Or he says he didn't say it.

MR. LEVINE: That's correct.

THE COURT: So I don't think it is relevant.

MR. LEVINE: I think the answer "yes or no" would be relevant and to the extent that you want to hear it, Your Honor, I would like him to answer it.

[70] THE COURT: Well, you mean you want the Agent to say whether or not at any time during the interview he was determined to arrest Mr. Beckwith?

MR. LEVINE: Or if he thought he had enough to arrest him for the commission of a crime or if he knew of the existence of a crime, and with that question we would be satisfied, Your Honor.

THE COURT: I will permit you—well I will ask the question myself: did you ever have any intent to detain him for any purpose?

THE WITNESS: No, Your Honor.

THE COURT: Were you going to take him down to the Internal Revenue Service for somebody else to interrogate him?

THE WITNESS: No sir.

THE COURT: And all the time that this thing was going on, for two or three hours, were there other people in the house?

THE WITNESS: Yes, there were at least one other person in the house, to my recollection.

THE COURT: Was this not a work day?

THE WITNESS: Yes it was.

THE COURT: Did he have to make any arrangements to open up the liquor store that morning?

THE WITNESS: Yes, that's right—he told Evelyn Wills that, to go on down, to my recollection he told Evelyn Wills to go on down to the store and open it up.

[71]THE COURT: He never told you that he had to go on down and open it up?

THE WITNESS: To my recollection, no.

THE COURT: Did you ever tell him that he couldn't go down and open up the store, that you were going to keep him there that morning?

THE WITNESS: No sir.

BY MR. LEVINE:

Q. If I may, who is Evelyn Wills? A. Evelyn Wills is a woman who is employed at the Colorado Liquor Store and, based on what she has told me, she has been a friend of Mr. Beckwith's for many years.

Q. Was she the one that was in the home that morning? A. She was there, yes sir.

MR. LEVINE: I have no further questions.

THE COURT: Do you want the testimony of the other agent, Agent Fornili?

MR. HOFFMAN: Yes, Your Honor, but I will make it much more short than this one.

THE COURT: You are going to make it much more short, Mr. Hoffman.

MR. HOFFMAN: I recognize that, Your Honor.

THE COURT: And the defendant, will he testify?

MR. HOFFMAN: I believe so, Your Honor.

* * *

[74] GARY ROGER PETERSON

was recalled as a witness and having been previously duly sworn was examined by counsel and testified as follows:

REDIRECT EXAMINATION (cont'd)

BY MR. HOFFMAN:

Q. Agent Peterson, I have just two or three more questions. Mr. Beckwith was arrested when, do you recall, on this indictment? A. I believe it was the 6th of the 10th, to be honest with you, I don't recall, but it was early June, the 6th or the 10th of June, and it was in the afternoon.

Q. Did you participate in that arrest? A. Yes I did.

Q. Where was the arrest made? A. The arrest was at the Colorado Liquors, 5514 Colorado Ave., N.W., Washington, D.C.

Q. Were any other law enforcement agents with you at the time of the arrest? A. Yes there were.

Q. What was their names? A. Special Agent E. Michael Fornili was with me, [75] from the Internal Revenue Service.

Q. And any others? A. No, there were two other individuals present.

Q. Were they from the IRS or elsewhere? A. They were from another agency.

Q. Which one? A. At that time it was called the Bureau of Narcotics and Dangerous Drugs.

Q. Would that be Agent Swift, would he be one of them? A. Yes, right.

Q. Can you tell me when or how it was arranged that they would participate in an arrest on a tax evasion case? A. Yes, there were some allegations during the investigation that Mr. Beckwith may be involved in drug activities, narcotics activities.

Q. And who authorized agents from the BNDD to go along with you? A. The Internal Revenue Service allowed them to come along.

Q. This was not done at the direction of the United States Attorney or in consultation with the U. S. Attorney? A. In consultation with, right–

Q. What assistant was that? A. Assistant United States Attorney William Hardy.

Q. The last question I have is this–when was it [76] that you started to consult with the U. S. Attorney about Mr. Beckwith, Mr. Hardy or anyone else? A. It would have been at the time, well, there was a time in August of 1972 where we consulted with an Assistant, I don't recall which one it was, regarding a witness that we wanted to obtain a Grand Jury subpoena for and that would have probably been the first time that we had any contact with or deal with the U. S. Attorney, Assistant U. S. Attorney.

Q. So it is your testimony that you made the original contact with the prosecutor's office, and it was not vice versa, that they first contacted you, with respect to Mr. Beckwith? A. That's correct.

Q. And that occurred sometime in August, is that correct? A. That's correct.

(Whereupon the witness was excused)

Whereupon

E. MICHAEL FORNILI

was called as a witness for the government and after having been first duly sworn was examined by counsel and testified as follows:

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q. Agent Fornili, would you state your full name for the record, please? [77] A. My name is Earnest Michael Fornili.

Q. and how are you presently employed? A. I am presently employed as a Special Agent for the IRS Intelligence Division in Washington, D. C.

Q. How long have you been a Special Agent with the Internal Revenue Service? A. I have been a Special Agent for approximately two years.

Q. For two years? A. Yes sir.

Q. Directing your attention to August of 1972, were you then in the same employment? A. Yes I was.

Q. When did you first become familiar with the defendant in this case, Mr. Beckwith? A. Well the first time that I saw him or met Mr. Beckwith was the day we went out and interviewed him at his home out in Silver Spring.

Q. How did you get involved in this? A. Well, Special Agent Peterson requested that I go with him on the interview of Mr. Beckwith.

Q. When was it that he requested you go with him? A. I really can't recall the specific date–probably, maybe a day or two prior to the day we went. He said, you know, "are you free, can you go with me?" and I said "sure, whenever [78] you want to go I will go with you."

Q. So you decided you would go on the Wednesday? A. Well this was the day that Special Agent Peterson decided that we should and so we did.

Q. Was there any conversation about getting in touch with Mr. Beckwith before you went out there? A. Not that I recall, no sir.

Q. Did you meet at his house? A. Meet?

Q. Or did he come to your office? A. Oh no, Special Agent Peterson and I met at a shopping center about, I guess, the middle from Mr. Beckwith's house because I live on one particular side of town and Gary lives on another, so it would be more convenient to meet there rather than to go to the office first and then go on out there.

Q. So you did not go to the office first? A. No sir.

Q. Alright, could you tell us what was said when you first met Mr. Beckwith that morning and who said what if you can recall? A. Well, we exchanged like social amenities and then we both proceeded to identify ourselves as Special Agents with the Internal Revenue Service who wanted to discuss some tax matters with him.

Q. You shook hands with him, too, didn't you, when [79] you introduced yourself? A. Yes I think so—that would be normal.

Q. What would you term the atmosphere, as a relatively friendly one? A. Yes sir, I would say it was.

Q. Did you feel any hostility at all? A. No sir, not when we talked to him, no.

Q. And what was done, if anything, or did you see Agent Peterson do in advertising Mr. Beckwith of his rights? A. Well, Gary, Special Agent Peterson, is the one who had the responsibility of, you know, introducing ourselves, and we met him in the living room and then he said "you would probably be more comfortable if you go into the dining room" and then we proceeded and then we sat down and we identified ourselves as Special Agents with the Internal Revenue Service by taking out our credentials and presenting them to Mr. Beckwith for his inspection.

Now I don't recall specifically the way, what we did, to actually bring the credentials out and place them right in front of him, but we do do that, place them right in front of the individual's face, so that if he wants to inspect them he can, and whether he actually picked them up and held them in his hand I don't know, but at least he was aware that we were Special Agents and we also told him of that fact, Special Agents for the Internal Revenue Service Intelligence Division.

[80] Q. Well, do you explain anything further about the Intelligence Division or what that is? A. Well, I myself didn't, no sir, but Special Agent—

Q. Well was told to him that day? A. Well that day, Special Agent Peterson said he wanted to discuss some of his tax matters for the years involved and then he took out and read from the card and just very briefly and I am sure the card has been seen here but, it says briefly that we are going to ask questions about "your tax liabilities" and then explains the function of a Special Agent and the fact that we do contact possible violations of IRS laws, criminal violations of IRS laws, and then goes into a statement of his constitutional rights, and that he doesn't have to speak to us or answer any questions, and he doesn't have to submit information or documents or answer any questions and he has a right to an attorney if he wants if and, you know—

Q. You read from the card then, is that what you are saying, whatever is on that card? A. I did not read it. I said Peterson read it from his card, yes sir.

Q. But anyway, the telling of Mr. Beckwith of his rights was from the reading of the card? A. Yes sir.

Q. He didn't tell him or just speak off the top of his head, so to speak? [81] A. No sir, he purposely brought out the card and read from the card.

Q. Alright, and then what happened? A. After he read him his rights, and Mr. Beckwith acknowledged that he understood it, Gary—

Q. How did he indicate that he understood it? A. Well he, I believe Gary, when he read his rights to him, said "do you understand your rights that I read to you?" and I think he said I am not sure whether he said "yes" but I am pretty sure that he did.

Q. You are pretty sure? A. Well, you know, it is hard to recall whether he, you know, nodded his head, but I believe he did say "yes" he understood it.

Q. If he said—well no, never mind, strike that. How long did you talk with him approximately? A. I would say it was about three hours.

Q. And were you at all time sitting in the dining room? A. Yes sir.

Q. And did you ask any questions yourself, do you recall any specific questions that you may have asked? A. Well, I mean, maybe it was something—

THE COURT: No, just "yes sir" or "no sir", or "I don't know." * * *

* * *

[86] Whereupon

ALVIN AUGUSTUS BECKWITH

was called as a witness in his own behalf and after having been first duly sworn was examined by counsel and testified as follows:

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q. Sir, would you state your full name for the record, please? A. Alvin Augustus Beckwith.

Q. Mr. Beckwith, what is your present address where you reside? A. 1818 Q Street, S.E., Washington, D.C.

Q. How long have you resided at that address? A. Going on nine years.

Q. Now how old are you, Mr. Beckwith? A. Forty-four.

Q. Could you tell the court the extent of your education? A. I graduated from Junior High School in 1945 and proceeded to go to Administration in which I spent one year and dropped out of school to work.

Q. What was the highest grade that you obtained the highest grade level? [87] A. Ninth.

Q. In the course of your schooling did you ever have any contact with tax courses or accounting courses? A. No sir.

Q. Have you ever had any instruction in any of those areas at all? A. No sir.

Q. Mr. Beckwith, when you came to be interviewed by Agent Peterson which we have been talking about here, he showed you a number of tax returns, about four or five in total? A. Yes sir?

Q. Am I correct? A. Yes sir.

Q. In respect to any of those tax returns, had you prepared any of those yourself? A. No I didn't.

Q. Did you ever prepare and file a tax return yourself? A. No I haven't.

Q. Do you know how? A. No I don't.

Q. Now, Mr. Beckwith, have you before this case, had you ever been arrested before? A. Yes sir.

Q. When, and do you know the jurisdiction. First, [88] do you recall the dates or the years? A. I believe so, 1963.

Q. Was that in Washington? A. Washington, D.C.

Q. And how many other arrests have you had and what were they for? A. Three or four.

Q. In any of the prior arrests before this case, had you ever been told of your rights, what your rights were, by a law enforcement officer? A. No sir.

Q. Mr. Beckwith, I call your attention to August 2, 1972, do you recall that date? A. Yes sir.

Q. Where were you in the morning hours of that day? A. I was on Kemp Mill Road, Silver Spring, you know—

Q. What is that place, is that your home or was it? A. It is the home of Mrs. Wills and her family.

Q. Did you live there or had you ever lived there? A. No I didn't.

Q. Did you live there sometimes? A. I stayed there occasionally.

Q. Did you see agent Peterson there that day? A. Yes sir.

Q. Alright, what time was that when you saw him? [89] A. It was in the morning, I don't recall the hour, but it was in the early morning.

Q. Tell His Honor in your own words what happened when you first met Agent Peterson in this house? A. Mrs. Wills opened the door, answered the door, and she came up and said that there was some revenue agents downstairs that wanted to see me and I said "okay" so I immediately went downstairs and I was fully dressed and they showed me the card with the identification on it, at least Mr. Peterson did, and I acknowledged, you know, that they were revenue agents or revenue men or whatever you want to call it and they were sitting in the den and they asked me was there some other place where I could take them where they could spread their books out and whatnot and I said "yes, come into the dining room" and that is where we proceeded to.

Q. What did they tell you what their purpose in being in your house and, if you can relate it to a specific agent, either Agent Peterson or the other agent— A. Mr. Peterson said that he was there to ask me some questions about my tax liabilities.

Q. And what did you understand that to mean? A. Well I just thought it was something he wanted to find out about my taxes, I didn't know.

Q. What else did he tell you after that and where did you go? [90] A. Well we went into the dining room and we sat at the table there and Mr. Peterson was at the one far end of the table and Mr. Fornili was at his rights side and I was on Mr. Fornili's right side.

Q. Now you said Mr. Peterson read to you from a card, is that true, as he testified? A. Yes sir.

Q. And have you seen a copy of that card? A. No I haven't sir.

Q. Well how did this come up that he read from that card and when did it occur? A. Well it occurred at the time, at the beginning of the interview, he started reading from the card at the height of it.

Q. Alright, and then what happened? A. An then he asked me did I understand what the card meant and so on.

Q. And what did you tell him? A. I said "I understood the card, yes, I understood."

Q. And did you understand it? A. I understood what the, what the, that he was reading from the card, but I didn't understand the necessities of the card—no.

Q. After he had read from the card and told you who he was did your opinion change at all as to why he was at [91] the residence of Mrs. Wills? A. No, I didn't have an opinion. All I knew, all I understood was that he wanted to ask some questions about my taxes.

Q. At that time did you know what a Special Agent was? A. No sir.

Q. Do you know what it is now, a revenue agent or Special Agent? A. No sir, I thought they were all the same.

Q. At this home, then, in the conversation if he had told you he was a member of the Intelligence Division, would that mean anything to you? A. No sir.

Q. And you talked with them about three hours, is that right, as they testified? A. Yes.

Q. And I would ask you to explain to the Court what was the general tenor or atmosphere of the interview and the discussion that occurred. A. Could you "phrase" that?

Q. Alright, I will try. What was the atmosphere of the discussion between you and the agents—I mean, when they made their inquiry from you, were they polite and courteous or what did you think? [92] A. Oh yes, in

fact, when we first, when they first identified themselves, they shook hands and they were smiling, and I was smiling, and during the course of the interview they were cracking jokes and they was laughing and whatnot.

Q. Let me ask you this: are you familiar or were you ever familiar at that time with any of these theories about net worth or cash expenditure theories in determining liability? A. I know nothing about it.

Q. Did you feel after the interview had occurred that you had said anything to incriminate yourself? A. No I didn't.

Q. Or that you were saying anything that would incriminate you? A. No sir.

MR. HOFFMAN: Nothing further.

CROSS EXAMINATION

BY MR. LEVINE:

Q. With the Court's permission: Mr. Beckwith, you have testified on direct examination that you had never yourself ever prepared in your hands, in your pen, any of your tax returns, is that correct? A. Right, sir.

Q. Now, in all the tax returns that you have filed, did you sign them? [93] A. No sir.

Q. You never filed any of your tax returns? A. You said all of them. I never signed all the tax returns I filed, no.

Q. Have you filed tax returns to which you did not append your signature? A. My signature was put on—my wife would sign my signature on some of them. If I didn't sign my wife would sign my signature.

Q. Well, regarding the ones, Mr. Beckwith, that you did sign. Did you read that portion of the tax return immediately above the place where you place your signature that any inaccuracy or any fraud, if you will, and I am not quoting the language specifically, but that there are criminal ramifications for falsifying any re-

ports—did you know that when you signed each of these returns? A. No sir.

Q. And, Mr. Beckwith, did you ever review any of the returns that you filed? A. No sir. Mr. Taiche prepared these returns and I was always under the impression that he was filing them right so I signed them.

Q. You never asked about it? A. No I just signed them.

Q. You never inquired about it? [94] A. No sir.

Q. You just signed a blank piece of paper? A. No it wasn't blank.

Q. But you signed it without reading what was on it? A. Right, because he is an accountant and I figured he knew what he was doing.

Q. And you never inquired about any of them? A. No sir.

Q. You trusted your accountant who was also a lawyer and you knew him to be a lawyer? A. Yes.

Q. And when you spoke with Mr. Taiche or one of his representative—I trust you did speak with Mr. Taiche or one of his representatives in helping with the preparation of your tax returns, did you not? A. I spoke to Mr. Taiche, yes.

Q. And you told him your sources of income, right? A. Yes.

Q. And he asked you about your sources of income? A. Er, I told him about my source of income in 1972, my 1972 taxes, not my 1970 or 1971 taxes.

Q. Well how did Mr. Taiche or one of his representatives ever learn about what your sources of income were for the tax returns that they prepared for you? A. Well he had the records to see where my sources [95] income came from.

Q. And you presented those to him? A. Yearly, with, you know, deductions—

Q. Yearly? A. Yes.

Q. And did you disclose all of your sources of income to him?

MR. HOFFMAN: Objection as irrelevant, Your Honor.

MR. LEVINE: No, Your Honor, when a man says that he doesn't know anything about filling out an income tax return he still should know that he ought to disclose his sources of income.

THE COURT: Well what relevance is that to this motion to suppress evidence?

MR. LEVINE: Well, he is suggesting to Your Honor that he has absolutely no idea—

THE COURT: I know what he is suggesting. I know what he is suggesting. If you want to go on, well, do you want to go through how he got together with Mr. Taiche for the preparation of his income tax returns? Did you go to Mr. Taiche's office, incidentally?

THE WITNESS: Yes sir.

THE COURT: And when you went to him did you take your personal records or papers and books of any kind?

THE WITNESS: I didn't have no personal records.

[96] THE COURT: Well, when you went to see Mr. Taiche, didn't he ask you questions?

THE WITNESS: Yes sir.

THE COURT: And you answered the questions that he asked you because he had to fill out certain papers and he needed that information to fill them out, isn't that correct?

THE WITNESS: Yes.

THE COURT: And when he got that from you he used it to fill out the forms that you signed, isn't that right?

THE WITNESS: Yes sir.

THE COURT: And you signed it and sent it in, right?

THE WITNESS: Right.

THE COURT: Well, that's all there is to it—that went on up to 1972, right?

THE WITNESS: Yes.

THE COURT: Alright.

BY MR. LEVINE:

Q. Did you know that you were supposed to tell Mr. Taiche all your sources of income? A. No I didn't.

Q. Well what did you think you were supposed to tell Mr. Taiche? A. Well I didn't—first of all, I didn't understand what you meant by that, when you say "all my sources of income".

THE COURT: Well, why did you bother to go to Mr. Taiche at all?

[97] THE WITNESS: He handles this store, you see.

THE COURT: But why did you go. He might have looked after the store—

THE WITNESS: Well he is a tax preparer and he had all my records.

THE COURT: So you knew that you had to file personal income tax returns, didn't you, because that didn't have anything to do with the store, that tax return?

THE WITNESS: Right.

THE COURT: Is that right?

THE WITNESS: Right.

THE COURT: And you knew that you would have to pay something, at least file a return anyway?

THE WITNESS: Yes sir.

THE COURT: Return on what?

THE WITNESS: On my income for that particular year.

THE COURT: What part of your income?

THE WITNESS: What part of my income?

THE COURT: Yes.

THE WITNESS: The income from the store.

THE COURT: Just the income from the store?

THE WITNESS: Yes sir.

THE COURT: And Taiche never asked you whether you had any other income, is that what you are saying?

THE WITNESS: Yes sir.

[98] THE COURT: He never asked you what property you owned or whether you were getting rental income or whether you had any bank accounts on which you were getting interest?

THE WITNESS: No sir.

THE COURT: He never asked you anything of that?

THE WITNESS: No sir.

THE COURT: Well, then, how long did it take you to fill out your returns—about fifteen minutes?

THE WITNESS: That's about it, sir.

THE COURT: Just about fifteen minutes—you would walk in and be there fifteen minutes and pay $5 and you were gone, is that right?

THE WITNESS: Well he had all of the records already, so you know, he would—

THE COURT: All of what records, you said you didn't have any records?

THE WITNESS: No, from the, from the—checks, cancelled checks, they were all of them in the office. I didn't have any. He had all the information that was necessary to have for preparing my income tax returns.

THE COURT: Did you tell Taiche and Taiche prepared your income tax solely on the basis of what you were getting from the store, is that right?

THE WITNESS: Yes sir.

THE COURT: And what you got elsewhere was nobody's business, right?

[99] THE WITNESS: I didn't get anything elsewhere.

THE COURT: The only source of income you had for filling out the tax returns was from the store?

THE WITNESS: Yes sir.

THE COURT: And that is what you told Mr. Taiche and that is the way the income tax returns were filled out, is that right?

THE WITNESS: Yes sir.

THE COURT: $500 a month times the number of months and that was all?

THE WITNESS: Yes sir.

THE COURT: Alright, well that's what he did.

BY MR. LEVINE:

Q. Did Mr. Taiche ever ask you if you ever went to horse races? A. No he didn't.

Q. Did Mr. Taiche ever ask you if you ever had any savings account? A. No.

Q. Did Mr. Taiche ever ask you if you had any activities in stocks and bonds? A. Well I invested $3,000 in the, the stock that I got from the store, a bonus from the store, I invested $3,000 of that into stock.

Q. And did Mr. Taiche ever ask you if you ever [100] received any dividends on that stock? A. Well he knew because he handled it himself.

Q. He didn't ask you about that? A. No.

Q. Did he ever ask you if you had any other stocks or bonds or investments? A. Not that I know, not that I recall.

Q. And for how many years did Mr. Taiche prepare your income tax returns? A. From 1970 on to the present day.

Q. From 1970 on but not prior to that? A. No sir.

Q. Who prepared your income tax returns in 1966? A. No one.

Q. Who prepared them in 1967? A. No one.

Q. Who prepared them in 1968? A. No one.

Q. '69? A. No one.

Q. Did you file any income tax returns during that period? A. No I didn't.

Q., No income tax in any of those years? A. No sir. I was unemployed at the time.

[101]MR. LEVINE: Could I have the Court's indulgence, Your Honor.

BY MR. LEVINE:

Q. Mr. Beckwith, were you married during the years 1966, 1967, 1968 and 1969? A. I have been married since August 13, 1950.

Q. And did your wife file any returns during the years 1966, 1967, 1968 and 1969? A. Yes sir.

Q. Were you named as a taxpayer on those returns? A. I don't know.

Q. You don't know if you were filing a joint return in those years? A. I don't know if joint returns were filed or not.

Q. Well, who filed your wife's tax returns for those years? A. I don't have any idea.

Q. Do you know if you signed those returns? A. Not to my knowledge, I didn't.

Q. You don't remember or are you saying you did not? A. To my recollection I would say I didn't sign any of them.

THE COURT: Well, did you ever authorize her to sign your name or did she ever tell you on the telephone that she was filing a joint return?

THE WITNESS: Yes sir.

[102]THE COURT: You knew that a joint return for husband and wife was being filed—did you know if your name was on it?

THE WITNESS: Yes sir.

THE COURT: Yes, did she get refunds at any time?

THE WITNESS: If she did I never knew anything about it.

THE COURT: No, but it was alright with you if a refund check was signed by her, wasn't it?

THE WITNESS: Yes sir.

THE COURT: So in fact during the years prior to 1970 she did have your authority to sign your name to a joint tax return, did she not?

THE WITNESS: If she told me I probably told her it was all right, yes.

THE COURT: Well, it didn't make any difference to you, then, did it?

THE WITNESS: Well what does income tax return mean? I mean what is—

THE COURT: What does a joint income tax return mean, what does joint mean? Is that what you are asking—what does the word "joint" mean?

THE WITNESS: Yes.

THE COURT: Aside from "hangout" in colloquial terms—what else does "joint" mean?

THE WITNESS: Well, I don't know.

THE COURT: Well, just in ordinary language, if I say [103] something is joint, what does it mean to you?

THE WITNESS: It means something together.

THE COURT: That's as good as anything.

THE WITNESS: Yes.

MR. LEVINE: I think so, yes,. Your Honor.

BY MR. LEVINE:

Q. Does joint income tax return mean filing one together to you? A. Yes as far as I knew.

Q. Sure—

THE COURT: Are you saying that before 1970 you never filed a tax return?

THE WITNESS: No, I filed a tax return but she worked for Pope Hardware, whatever year that was, and Mr. Taiche has that information.

THE COURT:

Q. So there was a return?

THE WITNESS: Yes sir.

THE COURT: What kind of return did you file then?

THE WITNESS: I believe it was a separate return.

THE COURT: Oh, you think it was separate?

THE WITNESS: In fact I am sure it was a separate return.

THE COURT: Why did you file a separate return, do you know?

[104]THE WITNESS: Well my wife and I wasn't together any more at that particular time.

the court; All right.

BY MR. LEVINE:

Q. Mr. Beckwith, during the course of your marriage to your wife, did there not come times where it became, or where it was in your interest to on some occasions file a joint return and on other occasions to file a separate return? A. Would you say that again, sir?

Q. Yes, during the time you were married to your wife, there were some years that it was to your advantage to file a joint return and other years where it was to your advantage to file a separate return, right? A. I don't understand whether it was to my advantage in any years to file any kind of return. I didn't understand that advantage part of it—it wasn't to my advantage to file one.

Q. Well, let me ask you this, Mr. Beckwith: on what basis did you determine that some years you would file a separate return and on some years you would file a joint return? A. The years 1970—Mr. Taische suggested that it would be a joint return so I didn't see anything against it, when you accountant or lawyer suggests—

Q. Were there ever any years prior to 1970 that [105] you filed a joint return? A. She probably, she filed a joint return but I don't know if it was any advantage or not.

Q. No, wait a minute, sir—when you say she filed it, as you define the word "joint", I trust you understand that there was testimony here that you both filed a joint return— A. Mrs. Beckwith filed a return and signed my name to it, yes sir.

Q. Is that correct? A. Yes sir.

THE COURT: Now just a minute. In connection with the circumstances surrounding this situation, see if I am right, Mr. Beckwith—when you and your wife were living together and getting along you filed joint returns, didn't you?

THE WITNESS: Some of the years, yes sir.

THE COURT: Well, now, when you say some of the years, what made the difference as to whether you would file a separate or a joint return some of the years that you and she were still getting along?

THE WITNESS. I don't know, sir, that is what I am getting at.

THE COURT: Well, who would file it—who would make that decision to file a joint return?

[106] THE WITNESS: She would.

THE COURT: She would?

THE WITNESS: And I just went along with her.

THE COURT: Whatever she said?

THE WITNESS: Right, sir.

THE COURT: And then there came a time when you were not getting along with her and you don't know what she did, is that right?

THE WITNESS: Right, I believe so.

THE COURT: And you did whatever—well you didn't do anything because in some years you didn't work?

THE WITNESS: Right.

THE COURT: Is that right?

THE WITNESS: Right.

THE COURT: And then there was also a time even though you didn't work when she did file a joint return with your knowledge and permission, is that right, because you were speaking to her then?

THE WITNESS: Right.

THE COURT: And then there was another time after you got Mr. Taiche, when Mr. Taiche suggested as your accountant and your lawyer that it was to your advantage, and you took his advice and you filed a joint return?

THE WITNESS: Yes sir.

THE COURT: All right.

[107] BY MR. LEVINE:

Q. Mr. Beckwith, was there any time during the interview of August 2, 1972 that you determined in your own mind that having a lawyer present might be beneficial or to your interest? A. No, I didn't.

Q. Mr. Beckwith, you were engaged in discussion about your Federal income tax returns with two members of the Internal Revenue Service over a period of approximately three years, I believe your testimony was, and you have told His Honor this afternoon that you knew virtually nothing about income tax. Weren't there any questions that were being asked that you thought it might be a good idea to have a lawyer or did you feel in your judgment that you were able to respond? A. I didn't see anything to have a lawyer for. I didn't—

Q. Were you able to respond to the questions that were being asked of you about your tax returns? A. I was answering the questions they asked me.

Q. Did you have any trouble in responding to the questions? A. Not to the point where it would be incriminal, no.

Q. Well I don.t believe you've answered the question. [108] Did you have any difficulty understanding that

question? Their english, or anything—their language was understandable, was it not? A. Sure.

Q. The language they used was coherent? A. Well what does coherent mean?

Q. It was logical and you understood the flow of what they said? A. Yes.

Q. You understood the meaning of what they asked? A. I understood what they were asking but I don't know what their meaning was.

Q. Not just a minute, did they ask you "do you own a home?" and did you understand that question? A. Yes sir.

Q. You were able to give an answer? A. Yes sir.

Q. And the other questions that they asked you, did it trouble you or were you able to answer them? A. Not all of them, sir.

Q. Well, did you endeavor to answer them as best you could? A. Yes sir.

Q. Did you choose not to answer any questions? A. Yes sir.

[109] Q. Did they press you on those questions that you couldn't answer? A. No, they didn't press me on anything.

Q. Anything you decided you didn't want to answer or couldn't answer was just left in that manner, is that correct? A. Er, the questions that they—some of the questions in that statement, it was their words, it wasn't mine.

Q. No, I am not referring to any statement now, Mr. Beckwith. I am asking you whether in the course of your interview they pressed you to answer any questions that you didn't want to answer? A. There was only a couple of questions I didn't want to answer, I couldn't answer.

Q. And you just did not answer them? A. That's right.

Q. And did they press you to answer them? A. No, they didn't.

Q. Was there ever a time during the course of the interview, Mr. Beckwith, that you sought to have or thought to yourself "well, gentlemen, I think we ought to terminate this—I think they ought to stop", until the meeting was over—and you were on your way? A. No sir.

[110] Q. Was there ever a time during that interview that you became fatigued or wanted to have a break or maybe a rest or have a cup of coffee? A. No sir.

Q. Now, Mr. Beckwith, after that interview or even during that interview, did there come a time where you made notes as to what happened during that interview? A. No sir.

Q. So the testimony that you are giving here today is the best of your recollection of the events which occurred over a year ago? A. Yes sir.

Q. There was no document that you have that might ever jog your memory in regard to what happened at that time? A. No sir.

Q. Now, do you recall, Mr. Beckwith, during the course of that interview specifically at the very beginning of that interview that Mr. Peterson advised you in the presence of Mr. Fornili, that there were criminal ramifications to this inquiry that they were focusing on?

MR. HOFFMAN: Objection, Your Honor. There has been no foundation for that question.

MR. LEVINE: Your Honor, I will rephrase it.

BY MR. LEVINE:

Q. Do you recall at the very beginning of the [111] interview that Agent Peterson advised you that one of his functions was to investigate the possibility of criminal violations of the Internal Revenue laws, do you recall that? A. Yes sir.

Q. Do you remember his specific reference to criminal violations? A. Well, not specific reference, I recall him reading me the card.

Q. Well, do you recall the reference to criminal violations? A. Well, I just didn't pin it down in my mind. I just—

Q. You heard it? A. I just thought that these guys were some people here that wanted to find out something about my taxes—

THE COURT: You don't talk to everybody in the world about your personal business, do you?

THE WITNESS: No sir.

THE COURT: And they came there and told you that they were Internal Revenue agents, is that correct?

THE WITNESS: Yes sir, sure.

THE COURT: And you were satisfied from what they showed you?

THE WITNESS: Yes sir.

THE COURT: It looked official to you?

[112] THE WITNESS: Yes sir.

THE COURT: And they wanted to ask you some questions?

THE WITNESS: Yes sir.

BY MR. LEVINE:

Q. And you do remember, don't you, Mr. Beckwith, that they made specific reference to criminal violations?

MR. HOFFMAN: Objection, Your Honor—he is asking as to criminal violations and he has already testified what they told him. He already said they didn't make any specific reference.

MR. LEVINE: I quite agree with the Court that Mr. Hoffman should be allowed a certain amount of latitude on direct examination but surely equal latitude should be given to us on cross examination.

THE COURT: His testimony was that he has no specific recollection as to reference to "criminal". He did not say that they did not make reference to it.

MR. LEVINE: Very well.

BY MR. LEVINE:

Q. Now, you do agree, Mr. Beckwith, that this document which has been marked as Defendant's Exhibit No. 1, marked by your lawyer, was in fact the card from which Mr. Peterson read at the beginning of the interview? A. He read from a card.

* * *

[121] to call the U. S. Attorney, Hardy, so that he can tell you how it happened, that there was a release about harrassment, or that it was in fact harrassment. Is that what you are asking?

MR. HOFFMAN: It appears to raise a question of credibility, Your Honor, and I would accept, if Mr. Levine has any information on how this got published in the newspapers, or whatever explanation he has, I would accept it.

THE GOURT: Now it might well, it might involve this in a very indirect way, but I don't have to go that far in order to judge the credibility of the witnesses.

MR. LEVINE: I understand.

THE COURT: And I'm not going to force the government to tell you everything that it knows about how this indictment came about. The agent said that he got into when his office received a tip and the tip also, as evidenced by the situation of the arrest, involves more than one law enforcement agency, so what press releases the government put out about harrassment, if they had said any more at that time with respect to this defendant, they could have been sued if they couldn't prove it. So, that is why they talked about just "harrassment" and the Bureau of Narcotics and Dangerous Drugs people didn't

find what they possibly expected when they went in there, so that is why this is just an IRS case.

* * *

[139] THE COURT: Let's suppose he is given the litany from the PD47 which is standard procedure, as you well know.

MR. LEVINE: You have now touched my final point.

THE COURT: Yes, I figures I would get to all of them, but as I see it, if he had been given the litany, on the [140] evidence I have heard in this case, that wouldn't have made one bit of difference.

MR. LEVINE: It would not.

THE COURT: Not one bit of difference. It wouldn't have influenced any action on the part of either the IRS Revenue Agents or Mr. Beckwith, not one bit.

MR. LEVINE: With the court's recognition of that, we have nothing further to submit, Your Honor.

THE COURT: Yes, I think that is the situation we have reached.

MR. HOFFMAN: Your Honor, I would disagree with that. I don't think this man, in any way, on this record, was sufficiently advised given the actual nature of the investigation that was being conducted.

THE COURT: I didn't follow that.

MR. HOFFMAN: He was not advised of the actual nature of the investigation they were conducting.

THE COURT: Well he wasn't advised of the actual nature of it. He wasn't told it was a net worth investigation, is that what you mean?

MR. HOFFMAN: He wasn't told that in any respect sufficient for him to know that this investigation was criminally oriented which it really was and I point out to the Court that page 30 of the opinion, the slip opinion in Stamp, where various cases are cited, and which refer to IRS agents [141] misleading the taxpayer into believing

that these are really civil in nature and not criminal, the Courts point out that it is not up to the taxpayer to know when civil might ripen into criminal prosecution.

[R-7, P 15]

EXHIBIT "B"

Memorandum of Interview

In re: Alvin A. Beckwith
Washington, D.C.

Date & Time: Wednesday, August 2, 1972
approximately 8:00 a.m. - 11:00 a.m.

Place: 12423 Kemp Mill Road
Silver Spring, Maryland

Person's present:

ALVIN A. BECKWITH – Taxpayer
Gary R. Peterson – Special Agent
E. Michael Fornili – Special Agent

Interview conducted by Special Agent Peterson

Special Agent Fornili and myself presented our credentials to ALVIN BECKWITH for his inspection. I introduced myself as a Special Agent with the Intelligence Division, Internal Revenue Service. I advised BECKWITH as follows:

> "As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws, and related offenses."

I told BECKWITH that I was conducting an investigation regarding his Federal income tax liability for each of the years 1966 through 1971. I told him that I wanted to ask him some questions. Before I began the questioning, I advised BECKWITH as follows:

"Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any

way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding."

BECKWITH acknowledged that he understood his Constitutional rights and thereafter the questioning commenced.

ALVIN BECKWITH furnished the following information: His full name is ALVIN AUGUSTA BECKWITH, Jr; he does not use the junior, since his father is deceased; his nickname is "Sonny Reds" or "Sonny"; his social security number is 577-36-6686; he was born on August 13, 1929 at Washington, D.C.; his present address is 1818 Q Street, S.E., Apt. 11, Washington, D.C., and is currently employed as Manager for Colorado Liquors Inc., 5514 Colorado Avenue, N.W., Washington, D.C.

BECKWITH stated that the condition of his health is "fine". He stated he was never hospitalized, for any reason, during the years 1966 to the present date and that he is not currently under any doctor's care for any illness.

[R 9, p. 19]

NEWS RELEASE

INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
Tel. (202) WO 4-4021

For Release:
Tuesday,
Nov. 26, 1968

IR-949

IRS ADVISES TAXPAYERS OF RIGHTS IN FRAUD PROBES

Washington, D.C. — Changes in the procedure for advising taxpayers of their rights during an investigation conducted by a Special Agent of the IRS Intelligence Division were announced today by the Internal Revenue Service.

The new procedure goes beyond most legal requirements that are designed to advise persons of their rights.

One function of a Special Agent is to investigate possible criminal violations of Internal Revenue laws. At the initial meeting with a taxpayer, a Special Agent is now required to identify himself, describe his function, and advise the taxpayer that anything he says may be used against him. The Special Agent will also tell the taxpayer that he cannot be compelled to incriminate himself by answering any questions or producing any documents, and that he has the right to seek the assistance of an attorney before responding.

Previously, the Special Agent identified himself and described his function at the first meeting with the taxpayer but was not required to give further advice unless the taxpayer was in custody or the investigation proceeded beyond the preliminary stage.

IRS has made no change in its existing instructions that if it becomes necessary to interview a person who is in custody, an Agent must give a comprehensive statement of rights before any interrogation. This statement

warns the person in custody that he may remain silent and that anything he says may be used against him.

A person in custody also must be told that he has the right to consult or have present his own counsel before making a statement or answering any questions and that if he cannot afford counsel he can have one appointed by the U.S. Commissioner.

[R 7, p. 14]

EXHIBIT "A"

D.C. Liquor Seller Held In Tax Case

The manager of a D.C. liquor store has been indicted by a special U.S. District Court grand jury on charges of federal income tax evasion.

1818 Q St. SE, was indicted by

Alvin A. Beckwith Jr., of 1818 G St. SE, was indicted by the jury last week on charges of understating his income for the tax years of 1970 and 1971 by $19,000. Sources in the U.S. attorney's office said the indictment was part of a continuing program that has been described by that office as "legal harassment" of persons whom they believe to be connected with underworld narcotics activity here.

A press release by the U.S. attorney's office pointed out that Beckwith, who manages the Colorado Liquor Store, 5514 Colorado Ave. NW, was arrested by Bureau of Narcotics and Dangerous Drugs agents as well as Internal Revenue agents.

Beckwith is free on personal bond.

BEST COPY AVAILABLE

[R 13] [Caption Omitted in Printing]

STIPULATION

* * *

2. That on August 2, 1972, in an interview with Special Agents Gary R. Peterson and E. Michael Fornili, the defendant stated the following:

A. On December 31st of each of the calendar years of 1965 through 1969, inclusive, he never had more than $300.00 cash on hand;

B. that during the calendar year 1970, his cash on hand increased by $700.00;

C. that during the calendar year 1971, his cash on hand increased by $500.00;

D. that he has been employed as the manager of Colorado Liquors, 5514 Colorado Avenue, N.W., Washington, D.C. since April 13, 1970;

E. that during the years 1960 through 1969, he was unemployed, except for about three months in 1966 when he worked as a stock clerk for a hardware company in Rockville, Maryland.

F. that during the years of 1966 through 1970, he won money from gambling (cards, craps, and horse races);

G. that the defendant's income tax returns for the years 1970 and 1971 reviewed by him upon their presentation by Special Agent Gary R. Peterson were identified by the defendant as his tax returns and did bear his signature (see Exhibits 1 and 2);

H. that the defendant's tax returns for the years 1970 and 1971 were prepared in the District of Columbia by the accounting firm of Sinrod and Tash and

that the returns were signed and mailed in the District of Columbia;

I. that all the taxable income the defendant received during 1971, was reflected on his tax return and that to the best of his knowledge he did not incur any expenses which were tax deductible and not reflected on his return;

J. that from 1960 to August 2, 1972, the defendant received no inheritance or gifts of money.

* * *

24. Internal Revenue Agent Edward D. Maggio would testify

A. that he is a certified public accountant trained and experienced in the auditing and computation of the returns and would qualify as an expert to give an opinion on Federal income tax obligations;

B. that based on the figures assembled by Special Agent Gary R. Peterson incorporated in this stipulation, the computation of the defendant's Federal income tax liability for the calendar year 1971, is set forth as follows:

Total Expenditures (paragraphs 2-20, inclusive)	$30,424.71
Less: Non-taxable sources of income (paragraph 21)	2,091.77
Adjusted Gross Income	$28.332.94
Less: Itemized Deductions	$1,670.92
Exemptions (Paragraph 22)	2,025.00
Corrected Taxable Income	$24,637.02

Less: Taxable Income Reported (Exhibit No. 1)	$10,821.78 *
CRIMINAL UNDERSTATEMENT	$13.815.24
Income Tax due and owing	$8.348.51
Income Tax per tax return	2,452.97
INCOME TAX DEFICIENCY	$5,895.54

* [Footnote deleted in printing]

* * *

26. The defendant offers no factual defense to this stipulated record.

/s/ Barry W. Levine

BARRY W. LEVINE
Assistant U.S. Attorney

ALVIN A. BECKWITH
Defendant

HERBERT B. HOFFMAN, ESQ.
Counsel for Defendant.

UNITED STATES DISTRICT COURT

United States of America vs.

Defendant: Alvin A. Beckwith, Jr., a/k/a Alvin A. Beckwith

DISTRICT OF COLUMBIA Criminal No. 480-73

JUDGMENT/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date: May 2, 1974

WITH COUNSEL: Herbert Hoffman, Esq.

The court has adjudged on March 21, 1974, that, the defendant having pleaded Not Guilty, and there being a finding of guilty, Defendant has been convicted as charged in Count Two of the offense of ATTEMPT TO EVADE AND DEFEAT TAX in violation of Title 26, Section 7201, United States Code.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS and to pay a fine of TEN THOUSAND DOLLARS ($10,000.00) plus Court Costs.

It is further ordered that the remaining count of the indictment be dismissed.

* * *